

a sufficient excuse for the neglect of the petitioner in not furnishing evidence of his claim before that audit was filed.

The argument that the other creditors are subjected to unreasonable delay by the negligence of this petitioner, is not well founded, because those other creditors might, at any time, have received their dividends of the proceeds of sale after reserving enough to pay this claim, should it be established. The delay has grown out of the controversy in regard to this claim, that is, whether it should or should not be excluded altogether, when the true and proper question was whether a fund should be reserved to pay it, in case the Court of Appeals should affirm the judgment rendered in Howard District Court, and the claim should in other respects be entitled to be paid out of the proceeds of these sales in whole or in part.

Under all the circumstances of the case, I am of opinion that the petitioner has not forfeited his right altogether to the consideration of the Court, and I shall therefore send the case back to the Auditor, with directions to state another account at the expense of the petitioner, in which account there shall be reserved a sufficient amount to cover this claim, if, upon examining the new proof, it should be thought proper to do so, and distributing the residue of the proceeds of the sale among the other creditors according to their respective rights and priorities.

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WILLIAM J. WARD, for Petitioner.

J. MASON CAMPBELL, for Complainant Creditors: